

**PRELIMINARY AGREEMENT CONCERNING DEVELOPMENT  
AND DISPOSITION OF LAND**

**By and between**

**COUNTY OF SAN DIEGO,  
a political subdivision of the State of California  
("County")**

**and**

**EXAMPLE COMPANY  
("Developer")**

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**EXHIBITS:**

EXHIBIT “A” - Site Plan  
EXHIBIT “B” - Ground Lease

PRELIMINARY AGREEMENT CONCERNING  
DEVELOPMENT AND DISPOSITION OF LAND

This Preliminary Agreement Concerning Development and Disposition of Land ("Agreement") is dated effective as of \_\_\_\_\_ (the "Effective Date"), by and between the COUNTY OF SAN DIEGO, a political subdivision of the State of California ("County"), as owner of the real property described below, and **EXAMPLE COMPANY** ("Developer"), which are hereinafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

**ARTICLE 1. PURPOSE OF AGREEMENT.**

The purpose of this Agreement is to provide for the preliminary terms and conditions for the lease of the Site (as more particularly described below) by County to Developer for the development of the Project (as more particularly defined below) by Developer. This Agreement is necessary in order for Developer to have sufficient certainty to process some of the required entitlements for the Project. This Agreement is intended to assist Developer to finance the Project and prepare the necessary environmental and technical reports needed to comply with the requirements of the California Environmental Quality Act ("CEQA"), which must be completed prior to issuance of a lease by County. County could be either lead agency or responsible agency under CEQA, depending on final project. Nothing in this Agreement is intended to constitute an action that would foreclose County, as either lead or responsible agency for the Project within the meaning of CEQA, from considering any alternatives or mitigation measures that may be identified through the preparation and consideration of any documents required by CEQA or from making any findings required by CEQA, all as more fully described in Article 7 below. Similarly, nothing in this Agreement is intended to limit or prohibit any lead or responsible agency from taking any action necessary for it to comply fully with its legal obligations as either the lead or responsible agency under CEQA for the Project. The lease of the Site and development of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

**ARTICLE 2. LEASE OF SITE; DEVELOPMENT OF THE PROJECT.**

2.1 Site. The "Site" is that certain real property consisting of approximately 31.47 gross acres of land, generally located on the northwest corner of the intersection of Weld Boulevard and Cuyamaca Street at Gillespie Field in El Cajon, California, as illustrated and designated on the site plan which is attached hereto as Exhibit "A" ("Site Plan"). The Parties acknowledge that the Site Plan is tentative and will likely continue to evolve as a result of Developer's processing of the necessary Approvals (as defined below).

2.2 Project. The "Project" is in the process of being defined through discussions with the City of El Cajon, which may be acting as the lead agency for the Project within the meaning of CEQA. At present, Developer anticipates that the Project will include ## concrete tilt-up industrial multi-tenant buildings (## sq. ft. total) with units ranging from ## to ## sq. ft., subject to certain excluded uses to be set forth in the Ground Lease (as defined below). A final definition of the Project will be made as Developer completes its discussions with the City of El Cajon and complies with the CEQA process, including the requirement to identify alternatives to the Project. Once the Project is fully defined and a Ground Lease issued, Developer shall be responsible for its design, development and construction, at Developer's sole cost and expense, on the Site consistent with the Approvals described below and the Site Plan, as such Site Plan may be modified during the public review process of the Project. Prior to construction of the Project, Developer must obtain all project entitlements, including the FAA's approval upon completion by the Developer of all necessary environmental and technical reports needed to comply with the requirements of the National Environmental Policy Act ("NEPA"). At Developer's sole

discretion, such entitlements and reports required to comply with NEPA may be completed either before or after the issuance of the Ground Lease.

2.3 Approvals. The Parties acknowledge that various governmental entitlement approvals and permits (the "Approvals") must be obtained before the Ground Lease is entered into and/or construction of the Project can proceed. Such entitlements may include, but are not limited to, CEQA compliance, which must be successfully completed before entering into a Ground Lease. Developer shall use its commercially reasonable efforts and diligently pursue the Approvals and, in connection therewith, County shall execute all truthful applications and related documents required by the City of El Cajon and other governmental agencies to be executed by the fee owner of the Site for the Approvals; provided, however, that County shall not be required to incur any liability or encumbrance on its Site in connection therewith, and further provided that all costs incurred in pursuing such Approvals (including the costs of consultants, architects and engineers) shall be the responsibility of Developer rather than County. The foregoing actions of County shall be referred to hereafter as "County's Application Activities". The Developer shall defend and indemnify County from any claim, demand, lien, loss, damage or expense, including reasonable attorneys' fees and costs, arising directly or indirectly from County's Application Activities. The Director, Department of Public Works or his designee is authorized to execute any Approvals, truthful applications, or related documents required to be signed by County pursuant to this Section 2.3. Developer shall be responsible for the installation of all on and off site improvements required for the Project.

2.4 Ground Lease. Attached hereto as Exhibit "B" is the form, subject to any modification required by Article 7 below and other items to be agreed upon prior to signing of Ground Lease ("Ground Lease") to be entered into by County and Developer, upon approval of the County Board of Supervisors and following successful completion of the CEQA process, which Ground Lease form sets forth all the terms of Ground Lease, including, but not limited to, the initial and maximum term and base rent payable.

2.5 Development and Use of the Site under Ground Lease. Subsequent to issuance of the Ground Lease per Section 3 hereunder, and subject to all Approvals required prior to the construction, the Project shall be developed in accordance with the Ground Lease and the uses permitted on the Site shall be only those uses permitted by the Ground Lease.

2.6 Physical Condition. Except as otherwise expressly provided herein or in the Ground Lease, the Site and all improvements thereon shall be conveyed in an "as is" condition, with no warranty, express or implied by County as to the condition of the soil (or water), its geology, or the presence of known or unknown faults or as to the condition of the improvements. It shall be the sole responsibility of Developer, at Developer's expense, to investigate and determine the soil (and water) condition of the Site and the suitability of the Site for the development to be constructed by Developer. If the soil (or water) condition of the Site is not in all respects entirely suitable for the use or uses to which the Site will be put, then except as otherwise expressly provided herein or in the Ground Lease, it is the sole responsibility and obligation of Developer to take such action as may be necessary to place the Site and the soil (and water) condition thereof in all respects in a condition entirely suitable for the development of the Site. County agrees to provide all prior studies and reports in County Department of Public Works, Airports' possession that may address condition of Site.

2.7 Consideration for Granting of Agreement. Upon approval of this Agreement by the County Board of Supervisors, Developer shall pay County a non-refundable fee of Sixty thousand dollars (\$60,000) as consideration for County granting to Developer the rights set forth herein. This fee shall not be an offset or credit against any other fees, charges or sums which may be owed by Developer to County. County may terminate the rights and options granted hereunder if the fees required by this paragraph are not paid within 15 days of approval of this Agreement by the County Board of Supervisors.

### ARTICLE 3. TERM OF THE AGREEMENT; ISSUANCE OF GROUND LEASE.

3.1 Date of Termination of this Agreement; Issuance of Ground Lease. The Parties acknowledge the difficulty of presently selecting a specific date for termination of this Agreement and/or issuance of a Ground Lease because of the uncertainty of if or when the required compliance with CEQA will be satisfied. The preceding sentence notwithstanding, and subject to completion of CEQA, termination of this Agreement and issuance of the Ground Lease shall occur no later than two (2) years from the Effective Date, subject to extension on a day-for-day basis (i) pursuant to Section 8.14 below or (ii) in the event the CEQA findings are legally challenged so long as Developer is diligently seeking resolution to such challenge(s). Upon the satisfactory completion of the CEQA process by Developer, County and Developer shall enter into the Ground Lease, subject to approval by the County Board of Supervisors, and this Agreement shall terminate. If the timeframes set forth in this Section 3.1 are not met for issuance of the Ground Lease, this Agreement shall terminate, unless the parties mutually agree to an extension in writing hereof, in which case Lessee shall pay to County a non-refundable fee of Thirty thousand dollars (\$30,000) per year for County's granting such extension.

3.2 Default by Developer. If County claims that Developer is in default with regard to any of the provisions of this Agreement, County shall serve written notice of such default upon Developer. The default notice shall state with specificity the nature of the alleged default. If the claimed default is not cured within thirty (30) days after the service of the notice of default (or, in the case of a default reasonably requiring more than thirty (30) days to cure, if Developer has not undertaken such cure within thirty (30) days and does not diligently proceed to completion of the cure), Developer shall, if the claim of default is correct, be deemed to be in default. In the event of such default, County's sole and exclusive remedy for such default shall be to terminate this Agreement and retain any deposits or fees previously delivered by Developer as reasonable liquidated damages, and not as a penalty, in light of the difficulty of precisely measuring damages.

3.3 Commencement Date of Lease; Conditional Subleases. The "Commencement Date" of the Ground Lease shall be determined by the County and Developer prior to the time the Ground Lease is presented to the Board of Supervisors; provided, however, that Developer shall be entitled to enter into subleases and related documentation with subtenants so long as such subleases and related documentation are expressly contingent upon (i) the execution and delivery of the Ground Lease, and (ii) consent by County pursuant to the terms of the Ground Lease and any required County consent to the subleases.

### ARTICLE 4. OBLIGATIONS OF COUNTY.

4.1 Agreements of County. Until the delivery of the Ground Lease or until proper termination of this Agreement, County agrees:

(a) Not to negotiate with any other person or party regarding the development or lease of the Site by such person or party.

(b) County shall promptly notify Developer of any material change in the condition of the Site or of any event or circumstance of which County receives notice or knowledge which makes, or will make, any representation or warranty of County under this Agreement untrue or misleading.

(c) County shall engage in County's Application Activities in connection with any Approvals sought by Developer, subject to the provisions stated in Section 2.3 (Approvals).

4.2 Default by County. If Developer claims that County is in default with regard to any of the provisions of this Agreement (including, but not limited to, the agreements in this Article 4), Developer shall serve written notice of such default upon County. The default notice shall state with specificity the nature of the alleged default. If the claimed default is not cured within thirty (30) days after service of the notice of default (or, in the case of a default reasonably requiring more than thirty (30) days to cure, if County has not undertaken such cure within thirty (30) days and does not diligently proceed to completion of the cure) County shall, if the claim of default is correct, be deemed to be in default. In the event of any such default by County, Developer's sole remedy shall be to terminate this Agreement.

## ARTICLE 5. REPRESENTATIONS AND WARRANTIES.

5.1 County Representations and Warranties. County represents and warrants to Developer as follows, which representations and warranties shall be deemed made by County as of the date hereof:

(a) This Agreement, and all agreements, instruments and documents herein provided to be executed or to be caused to be executed and delivered by County shall be duly authorized, executed and delivered by County, and upon delivery thereof to Developer shall be binding upon and enforceable against County in accordance with their respective terms.

(b) County has the legal right, power and authority to enter into this Agreement and all agreements, instruments and documents herein provided to be executed and to perform all of its obligations hereunder and thereunder, and the execution and delivery of this Agreement and the performance by County of its obligations hereunder shall not conflict with or result in a breach of any law, regulation or order, judgment, writ, injunction or decree of any court or governmental instrumentality or any agreement or instrument to which County is a party or by which County is bound or to which County or any portion of the premises described in the Ground Lease is subject. The persons executing this Agreement on behalf of County are duly authorized to do so.

(c) County has not granted any option or other right to lease or otherwise acquire any interest in any portion of the Site.

5.2 Developer Representations and Warranties. Developer represents and warrants to County as follows, which representations and warranties shall be deemed made by Developer as of the date hereof:

(a) This Agreement, and all agreements, instruments and documents herein provided to be executed or to be caused to be executed and delivered by Developer shall be duly authorized, executed and delivered by Developer, and upon delivery thereof to County, shall be binding upon and enforceable against Developer in accordance with their respective terms.

(b) Developer has the legal right, power and authority to enter into this Agreement and all agreements, instruments and documents herein provided to be executed and to perform all of its obligations hereunder and thereunder, and the execution and delivery of this Agreement and the performance by Developer of its obligations hereunder shall not conflict with or result in a breach of any law, regulation or order, judgment, writ, injunction or decree of any court or governmental instrumentality or any agreement or instrument to which Developer is a party or by which Developer is bound or to which Developer or any portion of the premises described in the Ground Lease is subject. The persons executing this Agreement on behalf of Developer are duly authorized to do so.

## ARTICLE 6. HAZARDOUS MATERIALS.

6.1 Hazardous Materials Activities under This Agreement; Developer Indemnity. During the term of this Agreement, Developer shall not violate any federal, state or local law, ordinance or regulation relating to Hazardous Materials. Developer shall defend, indemnify and hold harmless County and its officers, employees, and agents from any claims, liability, injury, damage, costs or expenses (including without limitation, attorneys' fees and the cost of any cleanup, testing, remediation, removal or disposal of Hazardous Materials) relating to or arising out of any Hazardous Materials released, deposited, discharged or disposed onto, under or around the Site by Developer, its contractors, employees or agents or arising as a result of Developer's violation of the provisions of this Section. The obligations of this paragraph shall survive the expiration or termination of this Agreement.

6.2 Ground Lease. The Ground Lease contains provisions regarding the use, storage and disposal of Hazardous Materials at the Project. In general, the Project shall not involve any use, generation, manufacture, production, storage or disposal on, under or about the Project of any Hazardous Materials except to the extent consistent with similar commercial/industrial projects. To that extent, Developer or its tenants shall be liable for any such use, generation, manufacture, production, storage, or disposal of such Hazardous Materials. The specific agreements of Developer and County as tenant and landlord under the Ground Lease regarding Hazardous Materials shall be as set forth in the Ground Lease, and shall be controlling on this subject from and after the execution and delivery of the Ground Lease.

6.3 Hazardous Materials. The term "Hazardous Materials", when used in this Agreement, shall mean any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Site, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Title 42 United States Code 9601-9662), the Resource Conservation and Recovery Act (Title 42 United States Code 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code 25300-25395), and the Hazardous Waste Control Law (Health and Safety Code 25100-25250.25). "Hazardous Materials" shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

6.4 Exceptions to Developer Liability for Hazardous Materials. Notwithstanding anything to the contrary in this Agreement, prior to the execution and delivery of the Ground Lease, should it be executed, or termination of this Agreement pursuant to Section 3.1, Developer shall not be liable or responsible for: (i) Hazardous Materials that are present solely as a result of the gross negligence or willful misconduct of County, its officers, employees or agents; (ii) Hazardous Materials for which Developer is not otherwise responsible that migrate onto the Site from other property, in ground water or otherwise; or (iii) Hazardous Materials present on the Site prior to the Effective Date.

ARTICLE 7. CEQA COMPLIANCE. County could be either lead agency or responsible agency under CEQA, depending on final project. Nothing in this Agreement shall be interpreted as limiting or prohibiting County's obligations or discretion as a responsible or lead agency under CEQA to (a) comment on or consider any environmental documentation prepared by lead agency for the Project or (b) make any findings required by CEQA, including, if necessary, adopting or refusing to adopt a statement of overriding considerations. In the event that the environmental documentation prepared by a lead agency, which could either be County or another governmental agency, identifies any alternatives to the Project or mitigation measures that are within the jurisdiction of County as a responsible or lead agency to implement, County may consider such alternatives and mitigation measures and adopt all or some of the alternatives or mitigation measures prior to executing the Ground Lease. Any alternatives or mitigation



measures adopted by County shall be incorporated into the Ground Lease. If Developer rejects the inclusion of such adopted alternatives or mitigation measures in the Ground Lease, County or Developer shall be entitled to terminate this Agreement. Prior to execution of the Ground Lease by the County, the making of any findings required by CEQA, the determination of whether a statement of overriding considerations should or should not be adopted, whether alternatives or mitigation measures identified in the environmental documentation prepared by the lead agency should be incorporated into the Ground Lease, or whether a notice of determination pursuant to Public Resources Code Section 21152 should be filed shall be made by the County of San Diego, Director, Department of Public Works, with appeal rights to the San Diego County Board of Supervisors.

Developer shall defend and indemnify the County, its agents, officers and employees (collectively "County Parties") from any claim, action, liability or proceeding against the County Parties to attack, set aside, void or annul the Developer's Project or any of the proceedings, acts or determinations taken, done or made as a result of County's processing and for approval of the Project. Developer's obligation to defend and indemnify under this Agreement shall apply to any lawsuit or challenge against the County Parties alleging failure to comply with the California Environmental Quality Act ("CEQA") or compliance with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. Developer's obligations under this Agreement to defend and indemnify the County Parties shall include, but not be limited to, payment of all court costs and attorneys' fees, costs of any judgments or awards against the County, and for any settlement costs, which arise out of County's processing and for approval of the Project.

#### ARTICLE 8. GENERAL PROVISIONS.

8.1 Entire Agreement. This Agreement and the exhibits attached hereto constitute the complete agreement of the parties with respect to the subject matters referred to herein, and this Agreement supersedes all prior or contemporaneous oral or written negotiations, promises, covenants, agreements or representations with respect thereto.

8.2 Further Assurances. The parties shall execute such further documents and take such other actions as are reasonable to carry out the intent of this Agreement.

##### 8.3 Assignment.

8.3.1 Restriction on Assignment. This Agreement may not be transferred or assigned by Developer voluntarily, by operation of law or otherwise, unless County has otherwise agreed in writing or as expressly authorized herein, which agreement County shall not unreasonably withhold. Any attempted assignment in violation of this section shall be null and void.

8.3.2 Permitted Transfers. Notwithstanding the foregoing in Section 8.3.1, Developer may assign (a) this Agreement to an Affiliate of Developer (as defined in Section 8.3.4 below), (b) this Agreement to a partnership, limited liability company or other joint entity comprised solely of Developer or its Affiliates, or (c) up to forty-nine percent (49%) of Developer's interest.

8.3.3 Mechanism for Assignment. In the event of a proposed assignment pursuant to Section 8.3, Developer shall give County thirty (30) days' written notice of the assignment and, in the case of a proposed assignment pursuant to Section 8.3.1 above, Developer shall supply County with sufficient information with respect to the proposed assignee so as to enable County to adequately evaluate such assignment.

8.3.4 Definition of Affiliate. As used in this Agreement, the term "Affiliate" shall mean any person or entity controlling controlled by, or under common control, directly or indirectly, through one or more intermediaries of Developer. The term "control," as used in the immediately preceding sentence, means the power to direct or cause the direction of the management or policies of the controlled person or entity.

8.3.5 Assumption of Liability. An assignment made pursuant to this Agreement shall be conditioned upon (and shall not be effective until) the assumption by the assignee in writing of all of the obligations of Developer under this Agreement from and after the date of such assignment. In the event of (i) a valid assignment pursuant to this Article 8, and (ii) the assumption of liability by such assignee, Developer shall be deemed released from all liability and obligations under this Agreement provided that the assignee has the capacity to perform the obligations of Developer hereunder.

8.4 Brokers; Finders. County shall not be liable for any real estate commissions or brokerage fees which may arise herefrom. County and Developer to each other represent that neither has engaged any broker, agent or finder in connection with this transaction. County and Developer each agrees to hold the other harmless from any claim by any broker, agent or finder retained by such Party or claiming through such Party.

8.5 Certificates. At any time and from time to time, each party ("Responding Party") agrees to sign and deliver to the other party ("Requesting Party") within fifteen (15) days after receipt of written request therefor, a statement certifying that (a) this Agreement is unmodified and in full force and effect (or, if such is not the case, so stating and setting forth any modifications), (b) that, to the Responding Party's knowledge, the Requesting Party is not in breach hereunder (or, if such is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Agreement. Such certification may be conclusively relied on by the Requesting Party, any equity investor of Developer, or any Title Insurer or proposed lender of Developer, and any proposed sublessees of any or all portions of the Site. Such certificates issued by County may be signed by the Director, Department of Public Works or his designee.

8.6 No Waiver. The waiver by either party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be construed as a waiver of any other covenant, condition or promise. The waiver by either party of the time for performing any act shall not constitute a waiver of the time for performing such act or of any performance of any other act. The delay or forbearance by either party in exercising any remedy or right, the time for the exercise of which is not specifically and expressly limited or specified in this Agreement, shall not be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

8.7 Notices.

8.7.1 How Made. Unless otherwise specifically provided herein, all formal notices, requests, demands and other communications hereunder shall be in writing and shall be given (i) by established express delivery service which maintains delivery records, (ii) by hand delivery, (iii) telecopy or (iv) by certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner. Addresses for notices may be changed by written notice sent in the manner provided above.

To County: COUNTY OF SAN DIEGO, a political  
subdivision of the State of California

Address for notice:

Director of Airports  
County of San Diego  
1960 Joe Crosson Drive  
El Cajon, California 92020-1236

To Developer: **Example Company**  
**123 Main Street**  
**San Diego, CA 92108**

8.7.2 Receipt. Notices shall be deemed effective upon receipt or refusal thereof.

8.8 Recitals; Exhibits. Any recitals set forth above and all exhibits and attachments attached hereto are incorporated into this Agreement and are made a part hereof. If there is any inconsistency between this Agreement and any exhibits hereto, this Agreement shall govern; provided, however, that, upon issuance of the Ground Lease, the Ground Lease shall govern the rights of the Parties in the event of any inconsistency.

8.9 Paragraph Headings. The headings preceding each of the above paragraphs are for convenience only and shall not be considered in the construction or interpretation of this Agreement.

8.10 Governing Law; Venue. This Agreement and the instruments referenced herein shall be construed in accordance with and governed by the laws of the State of California. Any action at law or in equity brought by either of the parties hereto for the purposes of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in the County of San Diego, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

8.11 Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry and such other protected categories that may from time to time be added to Civil Code section 51 or other laws prohibiting discrimination in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the Project, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project or any portion thereof.

8.12 Conflict of Interest. No member, official or employee of County shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employees participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he is, or she is, directly or indirectly interested.

8.13 Warranty Against Payment of Consideration to Third Party for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than the normal cost of conducting business and the

costs of professional services such as architects, engineers, attorneys, and brokers' commissions payable in connection with the leasing and subleasing of the potential future Project.

8.14 Enforced Delay. In the event that any of the Parties to this Agreement are prevented from proceeding with any of their obligations under this Agreement by reason of events that are beyond that Party's control, including supernatural causes, strikes, lockouts, earthquake, war, insurrection, riots, floods, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental delays, inclement weather, delays or inaction of independent contractors, litigation brought against the Project or a Party without that Party's consent, or similar events which are beyond that Party's control, then that Party shall be entitled to an additional grace period or extension of time in which to perform the obligations whose performance is precluded by such event, equal to the period of delay caused by such event beyond that Party's control, which period shall commence to run from the time of the commencement of the cause for delay and shall terminate upon termination of that cause.

8.15 Severability. Should any part, term, portion or provision of this Agreement, or the application thereof to any person or circumstance be held to be illegal, invalid or in conflict with any applicable governmental regulations, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

8.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

8.17 Non-liability of County Officials and Employees. No member, official, or employee of County shall be personally liable to Developer or any successor in interest, in the event of any default or breach by County or for any amount which may become due to Developer or to its successor, or on any obligations under the terms of this Agreement.

8.18 Approvals. Unless otherwise expressly provided herein, approvals required of County or Developer shall not be unreasonably withheld and approval or disapproval shall be given within a reasonable time. Unless otherwise expressly provided herein, the County Director of Airports or his/her designee shall have the authority to sign all necessary documents and issue all approvals, including those approvals contemplated pursuant to Section 2.3 hereof, and disapprovals on behalf of County required or allowed hereunder.

8.19 Business Days. If the last day for performance of an act falls upon a day that is not a regular business day, such last day shall be the next following regular business day.

8.20 Modifications. No modification, waiver or discharge of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver or discharge is or may be sought. Any amendments to this Agreement must be approved by Developer and the Board of Supervisors of San Diego County.

8.21 Preparation of Agreement. No inference, assumption or presumption shall be drawn from the fact that a party or its attorney prepared or drafted this Agreement. It shall be conclusively presumed that both parties participated equally in the preparation and/or drafting of this Agreement.

8.22 Joint and Several Liability. If any party consists of more than one person or entity, the liability of each such person or entity signing this Agreement shall be joint and several.

8.23 No Third Party Beneficiaries. This Agreement has been made and is made solely for the benefit of County and Developer and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.

IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the day and year above first written.

THE COUNTY OF SAN DIEGO,  
a political subdivision of the State of California

By: \_\_\_\_\_  
Clerk, Board of Supervisors

**EXAMPLE COMPANY**

By: \_\_\_\_\_  
**EXAMPLE NAME**, Manager

By: \_\_\_\_\_  
**EXAMPLE NAME**, Manager

APPROVED AS TO FORM AND LEGALITY  
COUNTY COUNSEL

BY \_\_\_\_\_  
DEPUTY

Exhibit “A”  
Site Plan  
[To be provided]

Exhibit “B”  
Ground Lease  
[To be provided]

